

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 7/2/2021 6:57:32 PM
To: Hartman, Mark [Hartman.Mark@epa.gov]
Subject: RE: following up

Hi Mark,

I think of the ethics issues as ancillary to your larger issues, but anything I can do to help, I'm here. Talk to you next week.

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Hartman, Mark <Hartman.Mark@epa.gov>
Sent: Friday, July 02, 2021 2:22 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: following up

Thank you Justina. I will give you a call next week. This is a very complicated situation to say the least. Have a nice Independence Day weekend!

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, July 2, 2021 1:38 PM
To: Hartman, Mark <Hartman.Mark@epa.gov>
Subject: FW: following up

Hi Mark,

Happy to chat with you at any time! Here's what I sent to Ex. 6 Personal Privacy (PP) in case didn't share it with you.

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From: Ex. 6 Personal Privacy (PP)
Sent: Friday, July 02, 2021 12:06 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: following up

Thanks, Justina. I've spoken to Mark Hartman today and he said he will reach out to you.

Ex. 6 Personal Privacy (PP)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, July 1, 2021 8:06 PM
To: Ex. 6 Personal Privacy (PP)
Subject: following up

Ex. 6 Personal Privacy (PP)

This note conveys my thoughts on the situation you explained to me. You're aware of four EPA employees, all OCSPP scientists, who sent a letter to PEER that alleges scientific integrity concerns. The employees referred to their EPA positions and titles, and named other EPA employees. You wondered about the ethics implications of their actions.

As EPA employees, these scientists are bound by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, which include specific prohibitions against misuse of position at 5 C.F.R. Part 2635, Subpart G. Employees are not permitted to use their public office for their own private gain, including referring solely to their EPA affiliation to convey that the Agency endorses or sanctions their personal activity. See 5 C.F.R. § 2635.702. Instead, EPA employees are reminded that, when teaching, speaking or writing in their outside activity on topics related to Agency business, then they should either refrain from mentioning their EPA affiliation or include it only as one of several biographical details with EPA not having any undue prominence. See 5 C.F.R. § 2635.807(b).

Moreover, the Standards of Ethical Conduct prohibit employees from disclosing nonpublic information. See 5 C.F.R. § 2635.703. That regulation defines the term as "information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public." The term includes Information that has been designated as confidential by the agency, has not been actually disseminated to the public, and information that is routinely exempt from disclosure under FOIA. See 5 C.F.R. § 2635.703(b). Names of individual employees, for example, might be the type of information that could be withheld.

In considering how to address potential ethics issues, you may speak with your own Deputy Ethics Official for your office, Mark Hartman, or you may of course consult with OGC/Ethics. Our advice is limited to the ethics rules, however, and there is no attorney-client privilege that attaches to ethics advice. See 5 C.F.R. § 2635.107. I do not know, for example, what protections an employee may enjoy under whistleblower provisions.

Let me know if you need any further information or musings from me. Good luck!
Justina

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